

550.0000 TAXABLE SALES OF FOOD PRODUCTS—Regulation 1603

See also Charitable Organizations; Food Products; Hospitals, Institutions and Homes for the Care of Persons; Vending Machine Operators. “Free meals,” see also Gifts, Marketing Aids, Premiums and Prizes; Nonprofit Organizations. Summer camps, see also Miscellaneous Service Enterprises.

(a) IN GENERAL—FACILITIES FOR CONSUMPTION

550.0020 Admission Charge. A donation requested of persons entering a place is not an “admission charge” within the meaning of paragraph (c)(2)(C) of Regulation 1603 as amended December 10, 1969, provided the donation is totally voluntary and no restriction whatsoever is placed on the entrance of persons not making a donation. The facts surrounding the request for the donation must be such that it is obvious that admittance is not restricted to those making the donation. A set amount for the donation, a turnstile or other restrictive device that must be passed through, or an attendant requesting the donation at the door will be evidence that the charge is not voluntary and all must pay or would reasonably believe they are required to pay. 1/27/70.

550.0022 Admission Charge. Where a fee for the use of facilities is charged to the persons in automobiles but not to pedestrians, such fee is not considered an admission charge. Accordingly, neither Lake Casitas nor Lake Cachuma has an admission charge for purposes of Regulation 1603. 9/10/70.

550.0040 Airlines. Prepared food sold to airlines is exempt from sales tax as food for human consumption since the food is not served by the supplier. The airlines are considered the consumers of all items furnished to their passengers where no separate charge is stated. 10/22/64.

550.0050 Amusement Parks. An amusement park is made up of an arcade area, miniature golf courses, water slides, and a baseball batting range. Although the entire park is fenced in, there is no admission charge. Once in the park, one can take advantage of the various attractions for a fee. The amusement park operator has two areas at the park with tables and chairs where patrons may eat food near food stands. One is the main arcade area that has tables and chairs located inside and right outside of the arcade area. In addition, there is a “Captain Kids” area that has inside tables and chairs and also tables and chairs right outside the area. No one comes to the park for the express purpose of buying food to take out.

Generally, it must be shown with some certainty that the benches, tables, and chairs are provided for the purpose of consumption of food. From the above description, it appears that the tables and chairs are provided for the purpose of eating the food bought at the park. They are in close proximity to the food sales operations. There is a rational connection between the food-selling operations and the tables and chairs which would constitute “facilities” within the meaning of Regulation 1603(f). Accordingly, sales of food within the park are taxable even if the patrons buy food at the stands and then take it to other areas of the park to eat. 11/17/94. (Am. 2003–2).

550.0062 Box Lunches. A taxpayer delivers cold sandwiches and salads in plastic boxes, bags or paper boxes along with a cookie. Alternatively, the same foods may be delivered on disposable platters. Disposable napkins, plates, and utensils are also furnished. No service other than unpacking the boxes and placing the food on a side table is provided. Tax does not apply because the taxpayer is neither serving the meals nor providing food at its own facilities. If the taxpayer also furnishes carbonated beverages, tax applies to the sale of the beverages.

The taxpayer also packages and delivers cold breakfast breads and pastries, fresh fruit or fruit salad, and hot coffee, tea and cocoa. The hot drinks are delivered in thermal containers which are later retrieved. Tax does not apply for the same reasons as described above.

When the taxpayer delivers cold finger sandwiches and cold hors d’oeuvres in the same manner as above, tax does not apply for the same reason.

The taxpayer also sells hot foods such as lasagna or chicken accompanied by vegetables and potatoes in thermal containers. The hot items are put on a side table and kept warm by using chafing dishes. Bread,

cold salads and desserts are also provided. Sales of hot foods and combinations of hot and cold foods are taxable. Therefore, the entire charge is subject to tax. 12/6/93.

550.0070 Conference Center Rentals. A company has a conference center which it rents to individuals or companies to hold seminars/conferences. At the conferences, meals are optional and available at a separate charge.

Assuming that the patrons pay the same rental rate whether or not meals are purchased, charges for rental of its conference center are not included in the gross receipts from the sales of the meals. 4/7/92.

550.0076 Cruise Ships. A taxpayer operates a cruise ship on Lake Tahoe. All cruises begin and end at an out-of-state point approximately four miles from the California border. The cruise routes are primarily inside this state, but the ship never lands or docks at a California location. While some cruises include meals, the ship's bar serves beverages on all cruises. The lump-sum charge for the cruise usually entitles the customer to one or two drinks plus a meal if one is offered. Additional drinks can be purchased at any time for a separate charge.

Based on the above facts, the following tax application applies to the taxpayer's operation:

(1) The taxpayer is a "carrier" under Regulation 1620.2. While the purpose of the cruise may be entertainment rather than transportation, the taxpayer does transport people by vessel for compensation and therefore comes within the definition.

(2) Beverages sold at the ship's bar and during meals are exempt from tax. "Trans-state trips" do not provide sufficient "nexus" to permit taxation. While the cruises all begin and end at one point in another state, the cruises are trans-state trips and the sales of beverages are therefore exempt.

(3) The meals are also exempt. While the regulation does not mention meals, for nexus purposes there is no reasonable distinction between sales of beverages and sales of meals. 10/29/85.

550.0085 80/80 Rule—Juice Bar. The taxpayer operates a juice bar, where fruit juices, ice cream and yogurt are sold. The business is located within a food court inside a shopping mall. In addition to the juice bar, taxpayer operates three other units in the food court which sell hamburgers, hot soup, and hot and cold oriental food. All four of the units operate under one seller's permit. There is a common seating area within the food court, which customers may use for consuming the food purchased. All of the juice bar products are served in containers suitable for take-out. The juice bar is not subject to the allocation of rent for the common seating area, although other tenants bear their prorated share.

Because the taxpayer operates four units under one permit within the food court, the activities of all four units combined must be taken into consideration. One hundred percent of the taxpayer's gross receipts is from the sale of food products. In addition, the taxpayer makes sales of meals, sales of food products for consumption at seating facilities which the taxpayer provides, and sales of hot prepared food products. The combined sales of meals and hot prepared foods of the other three units (excluding the juice bar) equal 91 percent of gross receipts. Since this amount is greater than 80 percent, all sales at the juice bar are subject to the sales tax. This is true even if the taxpayer does not provide any seating facilities since the 80/80 rule was already met. 1/13/94.

(Note: Change to section 6359, operative April 1, 1996, re 80/80 rule)

550.0090 Espresso Cart. A taxpayer operates an espresso cart inside the lobby of an office building. No tables or chairs are provided and items are served in disposable glasses, plates, or trays. Products sold include pastries, hot drinks (coffee and tea), cold juices, cold sandwiches and salads.

Since no tables or chairs are provided for the consumption of the food products and items are served in disposable containers, sales of the items mentioned above are exempt from the tax. However, if hot drinks

(coffee and tea) are sold for a lump sum price with other cold food products—e.g., coffee and pastry for one price—the total sale price is taxable. (Regulation 1603(e).) 2/10/93.

550.0095 General Purpose Room. An operator of an espresso cart has a contract with a student organization of a college to operate an espresso cart in its student union. The cart will be located in the student union's general purpose room. The students use the room for studying and gathering and they have to bring their own food and drink into the room. The sales by the cart operator are not exempt as student meals pursuant to Regulation 1603(j)(2)(A).

The cart operator will be selling food in a form suitable for consumption in a room where there is a reasonable relationship between the presence of the cart and the use of the tables and chairs in the room for consumption of the cart operator's products. One of the current uses of the room is for consumption of food that the students bring in themselves. Therefore, the use of the room to consume the cart operator's product is not fortuitous but an extension of a current use of the room. The room, tables, and chairs are supplied by the entity with which the cart operator is contracting and therefore its sales are subject to tax pursuant to Regulation 1603(f). 1/17/95.

550.0100 Farm Laborers in the Field. Lunches provided laborers in the field, where no conventional eating facilities are provided but where the meals are packed in containers, served where the laborers are working, and dished out on paper plates with plastic utensils which are discarded when the meals have been consumed, are not taxable even though food items constituting meals are involved. Such meals are not taxable provided no facilities exist and the items are not consumed on the retailer's premises. 6/6/62.

550.0103 Food Served from Returnable Trays. In the interpretation of Regulation 1603(f), a problem arises when multiple servings of cold food are delivered on a returnable tray. The following are four situations which might arise:

- (1) The food is on a large returnable tray and is in a single bulk quantity. For example, a wedding cake may be delivered on a tray.
- (2) The food is on a large returnable tray, but the food has been prepared to be served in individual portions, as, for example, a wedding cake is sliced into individual portions.
- (3) The food is on a large returnable tray but has been prepared to be eaten as individual servings as, for example, a tray of sandwiches.
- (4) Each individual serving is in its own returnable container and is intended to be eaten from the container.

Situations (1), (2), and (3) are nontaxable, but (4) is a taxable transaction. 2/25/94.

550.0103.175 Food- and Wine-Tasting Event. Every year on two consecutive weekends, a wine association has one annual fund raising event to raise money to promote the association's winery area. People buy a ticket which entitles them to visit all wineries for a weekend. Each winery features special wines and food pairings and activities related to learning about wine. All food- and wine-tasting and other costs for the event are donated by wineries, but each winery is given an amount from the association to partially cover its costs. Ticket holders do not pay for anything except their tickets.

The association provides purchasers of a ticket with food and wine. The association is the retailer of the food and wine it serves at its events, and it owes sales tax measured by the sales price of the ticket. 5/7/96.

550.0104 Form Suitable for Consumption on Premises. For purposes of Regulation 1603, food sold in a "form suitable for immediate consumption" on the seller's premises includes a pint (or any other size smaller than a quart) of cole slaw and ice cream. Food products that require further processing are not in a form "suitable for immediate consumption." For example, barbecue sauce in an 18 ounce bottle purchased "to go" is a food product requiring further processing. 3/27/85.

550.0106 Fundraising Event. A public television station sponsors a fundraising event in which attendees at these events pay an admission charge. The television station arranges for vendors to bring in their various food products for attendees to sample. In exchange for donating their food products, the vendors receive print and broadcasting promotion. Volunteers of the television station are responsible for taking money at the door, assisting in cleanup, and helping vendors present and serve their products.

Under this scenario, the television station is the seller of the food and beverages since the servers were primarily television station volunteers. On the other hand, if the vendors were contracted to supply and serve the food, the vendors would be the sellers and the consideration would be the value of the print and broadcast promotion provided to them and the space provided at the event to them to promote their products. 5/2/88.

550.0110 Grocery Store Located Inside Area Subject to Admission Charge. A grocery store is located within a resort area, entrance to which is subject to an admission charge. Limited term courtesy passes are issued so that persons can patronize retail facilities, but not utilize the recreational facilities. The grocery store is not regarded as a place to which admission is charged for purposes of applying tax to sales of food. 1/22/75; 5/29/96.

550.0115 Grocery Stores—Sales of Soda Fountain Drinks. A national drug store chain sells soda fountain drinks in its stores. There are no facilities for consumption of the drinks at the stores selling the drinks. The fact that customers may choose to consume the drinks while shopping in the store does not make the sale of the drinks taxable as being sold for consumption at “facilities of the retailer” under Regulation 1603(f). 11/1/05. (2007–1).

550.0120 Ice Cream Cones. Ice cream cones sold where they would not normally be consumed on the premises are tax exempt. 8/2/63.

550.0125 Kiosks. Sales of coffee and espresso drinks are made from an independently owned kiosk which is located within the lobby area of a major corporate headquarters. There is no seating provided. Drinks are to-go in paper cups. The customers may go into the company cafeteria to eat, or may take the drinks to their work stations.

Under these specific facts, the company cafeteria which is accessible from the lobby, does not constitute “facilities” of the kiosk. The fact that some customers may choose to use those tables and chairs for consumption of drinks purchased from the kiosk does not make it “facilities” of the kiosk. 7/18/95.

550.0128 Location-by-Location Basis—80/80 Rule. When the seller does not elect to separately account for sales of food products as specified in section 6359(b), the 80/80 rule is applied on a location-by-location basis. That is, one location of a food retail chain might be covered by the 80/80 rule while another might not. If a location falls within this rule, then that location must pay sales tax on all retail sales of food products sold in a form suitable for consumption even if these products are sold to go and actually eaten off the premises. 6/6/97.

550.0130 Meals and Beverages Included in the Price of a Cruise. An operator conducts day cruises on his boat within the California territorial waters. Customers pay a lump-sum charge which on a day cruise includes a cruise with one complimentary beverage. On a dinner cruise, the lump-sum charge includes a cruise, dinner and the customer’s choice of beverage in unlimited quantity.

On a day cruise, the complimentary beverages are used incidentally in providing the day cruise service and the operator would be deemed the consumer of those beverages. On a dinner cruise, as in a day cruise, there is no tax due with respect to the portion of the charge allocable to the cruise. Tax, however, is due with respect to the charge allocable to the meal and beverage portion of the total charge. 1/24/84.

550.0155 Opening Charge. An “opening charge” is made to customers for a catered event to cover the cost of turning on the power, turning on the air conditioning, opening the parking garage, and furnishing a

parking attendant and security guard during days in which the club would otherwise be closed. The “opening charge” is an additional charge for the sale of the catered meals and is taxable. 12/14/90.

550.0160 Soft Drink and Sandwich Is a Meal. A soft drink and sandwich when sold together constitute a meal. 9/29/76.

550.0180 Paper Cups in Plastic Holders, Crockery Mugs, and Counters, as Facilities.

(1) The tax applies with respect to sales of fruit juices which are served in paper cups contained, however, in plastic holders.

(2) The tax applies to receipts from sales of coffee or tea in crockery mugs.

(3) The tax applies to sales of sandwiches, doughnuts, or other food products for the consumption of which the customer uses the counter or any other facilities furnished by the seller.

In *Treasure Island Catering Company v. State Board of Equalization*, 19 Cal.2d 181, the sales held exempt were those where the food was wrapped in a paper napkin and handed to the purchaser over a ledge or shelf. The sale of frankfurter and hamburger sandwiches were the only sales involved, tax having been paid in connection with the sale of the beverages. It was also held that the ledge did not constitute a “counter,” under the meaning of section 6359, since the ledges were not intended to be used as counters due to the fact that a continued or general utilization of the ledges for such purposes would have interfered with the accessibility to plaintiff’s foods by prospective customers.

The tax does not apply with respect to sales of sandwiches or doughnuts which are handed to customers and taken away for consumption or consumed without the use of the seller’s “counter,” no tableware or other facilities being furnished. 2/13/51.

550.0182 Park Tables and Benches. A taxpayer operates a food concession stand in a public park. The closest park benches are ¼ mile away from the concession stand and the contract with the park department is silent regarding the benches.

Section 6359(d)(2) requires that there be some rational connection in demonstrating that the tables and chairs are provided for purposes of the consumption of concession stand’s food. This may be shown by the proximity of the tables to the concessionaire, the fact that the tables and chairs are in the same room as the concessionaire, the percentage of persons using the tables and chair for purposes other than eating meals, and the fact that the concessionaire services the tables by keeping them clean.

Since the tables are some distance from the concession stand and are available for general use, they are not considered as facilities provided by taxpayer even though customer may use the facilities. 3/22/91.

550.0185 Pints, Quarts and Half-Gallons of Ice Cream. For the purpose of the 80/80 rule, items sold in a quantity of less than a quart (e.g., a pint or a cup) are considered “furnished in a form suitable for consumption on the seller’s premises” even though these products are sold on a “take-out” or “to go” basis. This is a standard rule applicable to many items including, but not limited to, ice cream, milk, yogurt, and salads. As such, sales of a pint of ice cream on a “to go” basis are subject to tax. 8/22/90.

550.0190 Prison Inmates. State prisons are not considered “institutions” for the purpose of exemption from sales tax for sales of meals to “institutions” pursuant to Regulation 1603 (m). Accordingly, sales of meals to prison inmates are subject to tax. 1/14/93.

550.0195 Restaurant Sales on Separate Register—80/80 Rule. A business operates a fast food restaurant and also sells fresh fruit smoothies, which are nonalcoholic, noncarbonated fruit juice products sold on a “to-go” basis. Sales for these two operations are rung up on separate cash registers. Since the business equipment and employees operate out of the same business location and both are owned by the same restaurant company, the juice smoothies sales must be considered together with the meal sales to

determine whether the 80/80 rule applies. If the fast food operations do not bring the smoothies sales within the 80/80 rule, the sale of the “smoothies” are exempt from tax when sold on a “take out” or “to-go” basis. If the business comes within the 80/80 rule and the company elects to separately account for sales of the “smoothies,” the gross receipts from sales of the “smoothies” sold on a “take out” or “to-go” basis are exempt from tax as long as the separate accounting is fully documented in the company’s records. 4/22/98. (M99–2).

550.0200 Room Rental. Where a club operating a clubhouse and allowing other organizations to use the facilities, charges an organization a fixed amount per capita for a dinner, no part of such charge may be allocated to clubhouse rental and regarded as exempt. The entire charge for meals is subject to tax. 1/10/55.

550.0265 Sales by Food Shop. A company operates a restaurant located on one street and a food shop located around the corner. The only connection between the two is a door into the back kitchen area. The two establishments should not be treated together for purposes of determining whether the “80/80 Rule” is required to be applied. This opinion is based on the assumption that the common kitchen area is not open to the public for access to both locations. 5/3/90.

550.0270 Sales of Snacks Through the Honor System. A taxpayer requested an opinion regarding the application of sales tax to sales of snack food through the honor system.

It is assumed that by “honor system,” the taxpayer means a system whereby customers take snacks from a box or tray and pay for the snacks by depositing money in a container the seller provides. Snack trays share common characteristics with vending machines. Both are unattended and the transaction is completed when the customer places money in a slot or other opening. However, the plain meaning of “vending machine” does not include trays or nonmechanical open boxes. Thus, the snack tray is more like a snack bar or a snack cart which can also be unattended.

Snacks sold through an honor tray may be taxable, depending on where the sales take place. Sales of snacks are taxable when sold at or near a lunch room, break room, or other facility which provides tableware or provides tables, chairs, or dishes and it is contemplated that the food sold through the snack tray will normally be consumed at such facilities. 9/22/93.

550.0275 Subsidies to Food Sellers. A management firm operates a cafeteria at a location identified as a maternity home. Its contract provides for reimbursement of its cost plus a management fee. Meals are furnished as follows:

- (1) Meals are served to residents. No charge is made for the meals either by the firm or the maternity home.
- (2) Meals are served to visitors, employees, or others. These people pay for their meals.
- (3) Meals are served at “official business” meetings or conferences with a separate charge made to the maternity home. No charge is made to the staff attending these functions.
- (4) Catering sales are made to outside groups who pay for these meals.

The furnishing of the meals to residents may be exempt if the maternity home qualifies as an “institution” under subdivision (m) of Regulation 1603. There is insufficient information available to determine if the maternity home qualifies as an “institution.”

Apparently, the sales to visitors and the catering sales to outside entities covers the management firm’s full cost for such sales. The “subsidy” is source of income for sales to the home’s residents and for the meals served at staff meetings and conferences. Accordingly, it is part of the gross receipts from these sales by the caterer to the maternity home. This “subsidy” is distinguishable from the *Szabo* case because in *Szabo*, the sale was to the employee with a subsidy by the employer. Here, the sale is directly to the employer. There is no sale to the employee with a subsidy by the employer.

As indicated above, if the maternity home qualifies as an “institution,” the sales amount allocable to meals served to the residents is exempt including the pro-rata share of the subsidy. 11/10/92.

[550.0300](#) **Use of Facilities—Payment by Retailer for.** A retailer has an informal arrangement with an industrial employer whereby he is permitted to sell pre-packaged food items for consumption at tables and chairs in its plant in return for which the retailer pays 4 percent of his gross to the employer. Sales of such food products are taxable beginning September 17, 1965. 1/14/66.

[550.0301](#) **Wine-Tasting Parties.** A charity organization hosts a wine-tasting party, making a charge for admission. The entire charge is taxable unless it can be demonstrated that the cost of the wine consumed by the attendee is insignificant in relation to the charge for admission or a separate charge is made for the wine. 11/17/75.

(b) RESTAURANTS, HOTELS AND BOARDING HOUSES

550.0305 **80/80 Rule.** The 80/80 rule applies only to sales of food products sold in a form suitable for consumption on the seller’s premises. The rule does not apply to off-premises caterers. Depending on the nature of the services the off-premises retailers are obligated to provide, rules applicable to them are found in Regulation 1603 (f) or (h). 8/20/91.

550.0320 **Averaging Five or More Guests—Manner of Determining.** Since there is no prescribed time in Regulation 1603 for computing averages, it is our opinion there is no arbitrary period of time for which an average should be computed, and that the determination should be based on the facts of the particular case, so as to arrive at a reasonable period in each case. It would be confusing and undesirable to compute the average on a flat monthly basis in all cases, since a boarding-house with only a slight fluctuation in boarders might alternate monthly from status as taxpayer to an exempt status. On the other hand an arbitrary adoption of an annual basis for computing the average, without allowance for other factors, might work to the disadvantage either of the taxpayer or of the state in cases where there has been a sudden major change in the volume of guests served at the boarding-house. We believe that if a boarding-house which normally averages three guests enlarges its facilities to serve six, it becomes subject to the tax during the first reporting period in which its averages five or more guests. On the other hand, a boarding-house which customarily averages six paying guests should be considered exempt during the first reporting period during which, as a permanent policy change due to changes in facilities or personnel, it averages less than five paying guests. A definitely longer period of time should be required to establish an average where the decrease in guests is due merely to a decrease in business, and the boarding-house continues to offer its services to five or more and thus potentially will maintain its average. 9/4/51.

550.0340 **Dinner Club Membership.** A membership entitling the member to a free meal at a given restaurant provided he purchases a meal of equal value is sold by a promoter for \$12, \$10 of which is retained by him and \$2 turned over to the restaurant. The \$10 is not subject to tax but the \$2 becomes part of the restaurant owner’s gross receipts. Tax should be charged by the restaurant only upon the price of the meal paid for by the member, but if the restaurant charges tax on the price of the free meal it must pay such excessive reimbursement over to the state. 11/27/62.

[550.0343](#) **Dinner Theater.** Generally, when a taxpayer provides a nontaxable service and tangible personal property in the same retail transaction, the taxpayer will not be allowed to allocate all of its profit to the nontaxable portion of the transaction. In the case of a dinner theater offering dinner and a show for a single price, the Board ruled that the single amount should be allocated on the same basis as an American plan hotel pursuant to Regulation 1603 which says that “a reasonable segregation must be made.” While a reasonable segregation is a matter of judgment, the segregation of proceeds should result in a taxable amount at least sufficient to cover the retailer’s cost of food, operating expenses and a mark-up. 7/19/85.

[550.0345](#) **80/80 Rule—Bulk Food.** Bulk sales of individual items—e.g., a bag of doughnuts, muffins, or croissants—are in a form suitable for consumption at the facilities of the retailer. Thus, such sales are

considered taxable food sales in computing the taxable percentage of food products in determining if the “80/80 rule” applies.

On the other hand, the sale of sandwich fillings on a to-go basis are sales of food products not suitable for consumption at the retailer’s facilities. Such sales are considered not taxable in determining if the “80/80” rule applies to the taxpayer operations. 4/15/94.

550.0348 Fish—You Buy, We Fry. Taxpayer is engaged in business as a fish market with no facilities provided for customers to sit and eat the food purchased. Food is sold on a take out basis wrapped and placed in paper bags. As part of the fish market operations, taxpayer made sales of fish under the name “you buy, we fry.” The customer would identify a fish filet on display, taxpayer’s employee would fry the fish and taxpayer would then hand deliver it to the customer. The customer would be given one sales receipt indicating a separate charge for the cold fish and another separate charge for the frying.

Pursuant to Uniform Commercial Code—Sales, section 2401(2) and Regulation 1628(b)(3)(D), the sale occurs (i.e., title passes to the purchaser) when the retailer physically delivers the property to the purchaser unless the parties had an explicit agreement to pass title at an earlier time. Since no explicit agreements existed, taxpayer sold each “you buy, we fry” fish item to their customers at the time they hand delivered it to them. In summary, the essence of the “you buy, we fry” transaction is one combined transaction—a sale of a hot prepared food product. Accordingly, as a sale of hot prepared food products, the gross receipts from such sales are subject to sales tax. 2/27/84.

550.0350 Guest Checks. Tax applies to sales of guest checks to restaurants. Restaurants are the consumers of guest checks used to record the customers order, inform the cook of such order, inform the customer of the charge, and subsequently as an internal accounting control. The customers temporary possession of the check is not in lieu of a transfer of title within section 6006(a) and is not a sale. 1/23/85.

550.0360 Ice Sales to Bars and Restaurants. The buyer may give the wholesaler a resale certificate if ice is purchased by a restaurant or bar solely for sale with food or drinks. But the wholesaler should collect tax on all ice sold to places which use part of the ice for refrigeration and part for resale with food and drinks; such restaurants or bars can deduct the tax-paid purchase price of ice used for sale with food or drinks on their own sales tax returns. 5/1/64.

550.0380 Ice and Floral Decorations. Ice purchased tax-paid which is used to cool foods, beverages, or water and which is served to the individual customer along with such food or beverages is regarded as sold by the restaurant rather than used. Accordingly, the restaurant may take a deduction on its return for “Tax-Paid Purchases Resold.”

Similarly, where floral decorations are purchased tax-paid and resold to a customer who has specifically requested such decorations, the restaurant is regarded as selling the flowers rather than using them and a like deduction may be taken on the return. 12/8/54.

550.0390 Meals Sold to Residents of Retirement Complex. Meals sold to residents of a retirement complex by a food service contractor are taxable when the minimum age of the residents is 55 and the meals are paid for by the residents as the meals are purchased. The exemption for such meals is available only in circumstances described in Regulation 1503(a)(4), where the meals are included in a flat monthly rate for board and room, the minimum age of the residents is 62, and no more than four persons under that age are in residence in any calendar quarter. 11/9/92.

550.0420 Paper Covers. Paper covers for glasses containing liquid used in room service of a hotel, and which are not re-usable, are regarded as being sold with the meal. Sales of such covers to persons engaged in the business of selling meals are, accordingly, sales for resale. 6/1/56.

550.0440 Paper Place Mats. Paper place mats sold to a restaurant for the individual use of a single patron are in the category as paper napkins and may be sold for resale purposes. 3/14/55.

550.0460 Paper Tablecloths. Sales of paper tablecloths to restaurants are not in the same category as paper napkins as they are used by the restaurant rather than resold with the meal. Accordingly, such sales of tablecloths are taxable. 4/13/54.

550.0480 Parking Attendants, etc. Charges for such services as parking attendants, security guards, and wrap attendants may be excluded from the measure of sales tax payable by retailers of meals, provided the charges for the services of these persons can be identified on the retailer's records, and provided that the retailer will certify that the personnel performing these services did not also participate in the service of food and drinks. 3/8/66.

550.0500 Photographer's Charges. When a retailer of meals includes the cost of having pictures taken at a banquet, etc., in the price of meals, even though separately stated, such cost may not be deducted from the retailer's gross receipts subject to tax. 1/24/52.

550.0525 Private Dormitories. A privately owned dormitory which contracts with and receives payment directly from boarders for meals and food products is a retailer and must report and pay tax on the fair retail selling price of the meals and food products based on a reasonable segregation of the lump-sum charge for room and board. A caterer employed by the private dormitory to operate its food service facility is the retailer of meals and food products sold to boarders and other persons which are not provided pursuant to the contract between the private dormitory and the boarders. 3/27/72.

550.0527 Sales by Institutions for 62 or Older. Sales of meals and food products for human consumption, furnished or served to and consumed by residents of any home or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older are exempt from sales and use tax. However, sales of nonfood products such as carbonated beverages or beer sold by the institution are not exempt from tax unless they are part of a meal. Separate sales of any nonfood products would require the institution to obtain a seller's permit and file sales tax returns. 2/26/80.

550.0529 Sales of Meals and Food Products. An individual is the sole proprietor of a boarding house facility with 284 rooms and board for a flat monthly rate to permanent residents 62 years of age or older. The individual intends to form a corporation to lease approximately 25 rooms to operate a hotel for transients on the premises. The corporation would rent the rooms to the general public.

In this case, it is highly probable that persons under the age of 62 would reside on the premises, albeit on a transient or temporary basis. Section 6363.6 provides that the house or institution claiming a tax exemption for the sales of meals to its residents must serve exclusively as a principal residence for persons 62 years or older. Clearly, the requirement for exclusive residency by persons 62 years of age or older is not met when the hotel corporation subleases rooms for occupancy by persons under the age of 62 years. Consequently, the exemption from tax available under section 6363.6 would not apply to the sales of meals by the boarding house facility following the proposed transaction between the individual and the hotel corporation. 9/1/83.

550.0533 Steak Markers. Steak markers which are served along with the steak sold in a meal at a restaurant are considered sold along with the meal. Thus, the restaurant may purchase the markers for resale. 4/25/83.

550.0540 Tour Operator. A taxpayer operates a seasonal business for travel. For one type of tour, it takes possession of a hotel for a two week period. It purchases food and supervises the preparation of meals by hotel employees. It sells tour packages which include room rental, food, beverages and travel costs. During the two week period the hotel is not open to the general public. All payments by tour patrons are made to the taxpayer, and the taxpayer makes all payments to the hotel.

The taxpayer is regarded as the seller of the meals and beverages and is responsible for sales tax on those sales. 7/11/94.

(c) "DRIVE-INS"

550.0560 **Car-Hop Service.** An establishment providing "car-hop" service is one which provides parking facilities for use of patrons in consuming food, and sales of food "to go" are not exempt. 12/9/63.

[550.0580](#) **Doughnut Stand.** A doughnut stand located in a shopping center and providing tables and chairs for customers, although liable for tax on doughnuts sold for consumption on the premises, is not liable for tax on the sale of doughnuts sold in bulk in consumption off the premises. A shopping center parking lot is considered as provided for the general use of all patrons of the shopping center and not limited to patrons of the doughnut shop. 11/6/64.

[550.0585](#) **Drive-In.** A donut shop has two windows from which customers may drive up or walk up and purchase donuts. Customers may also come into the shop to purchase donuts. Seventy percent of the sales are "to go." The remainder represents sales of donuts consumed on the premises.

Seven trash barrels were available outside the restaurant. Parking spaces for fifteen cars were available. Evidence supports a finding that the parking spaces available were intended primarily for customers eating inside the shop and employees. Under these facts, the donut shop is not a drive-in for purposes of Regulation 1603. 5/23/78.

[550.0620](#) **Parking Facilities.** Parking facilities provided for general use at supermarkets and shopping centers are not sufficient to require food sold "to go" at coffee and snack bars to be subject to tax. 10/25/63.

(d) TIPS, SERVICE AND COVER CHARGES

[550.0680](#) **Admission Charges—Theatre Restaurant.** Charges for admission to a place furnishing entertainment which are billed separately from minimum charges for meals or drinks are not subject to tax. 1/28/65.

[550.0685](#) **All Inclusive Ticket Prices.** When admission to events is for a single ticket price which includes entertainment, food, prizes, etc., a segregation must be made on the ticket between taxable and exempt items. 5/8/92.

[550.0688](#) **Allocation of Tips.** A lump-sum charge is made for furnishing meals, drinks, and a river cruise. An allocation of the lump-sum charge is made between meals, tax, cruise, and tips. Where service charges are mandatory on purchases of food and drinks, these charges are included in taxable gross receipts. If the taxpayer can show that a specific percentage of the sum allocated to tips is, in fact, paid to ship personnel who do not prepare and serve meals or drinks, that percentage should not be includable in taxable gross receipts. 5/11/93.

550.0695 **Banquet Tips.** To help customers plan banquets, the taxpayer employs convention coordinators and caterer coordinators. These employees meet with the customers, give them written policy information and enter into agreements for the parties or meetings, in addition to the banquets. The standard policy information and the standard agreement both state that "the suggested gratuity is 15%" for food and beverage. Before the banquet, the parties sign a prospectus and specify, among other things, the details of the food and beverage service and the agreed upon gratuity. The prospectus, the policy information, and the standard agreement collectively constitute the contract for the banquet.

A sample of the prospectus showed that all gratuities were 15% except for one at 11.93%. The prospectus for the one exception was signed (approved) by the president of the corporation, while all the other prospectuses were signed by the coordinators.

Considering the sample, it appears that a gratuity of less than the suggested amount requires the final approval of an officer or a supervisor. While the suggested gratuity of 15% is not mandatory, the fact remains that some gratuity negotiated in advance between the taxpayer and its customers is mandatory.

Customers do not have the option to enter into contracts for the sale of food and beverages, and not specify an amount for the gratuity. For sales and use tax purposes, when a retailer asks one price for the sale of merchandise, but accepts a lower price following negotiations with the buyer, the amount ultimately received remains subject to the sales or use tax. The result is not different merely because the negotiated amount is for services that are a part of the sale. Therefore, the taxpayer's gratuities are considered mandatory and subject to sales tax. 3/21/95.

[550.0715](#) **Gratuity.** Voluntary gratuities are not taxable. A check to the customer as follows does not meet the test of voluntary. The total amount received is subject to tax:

Beverage total including tax \$XXX.XX

Optional 15% gratuity \$XXX.XX

Total \$XXX.XX*

* The above totals includes an optional 15% gratuity. You may raise, lower or eliminate this gratuity by telling your server. 8/26/96.

[550.0730](#) **Minimum Meal Charge.** Where a food service enterprise charges a fixed amount per meal to an organization making reservations for its members, and charges an additional amount for late reductions in the number of meals to be served, the additional amount is part of the total charge for the meals actually served and is subject to tax. 3/31/76.

550.0740 **Service Charges.** Where service charges are mandatorily imposed upon the purchase of drinks, the same being intended to cover tips, such charges must be included in taxable gross receipts. 9/22/53.

550.0760 **Service Charges.** A standard amount collected by a club from its members as a service charge is not a gratuity even though the charge is paid over to employees and is not used to offset their wages. The service charge, paid as an automatic obligation of the club members, is collected as an exaction and must be included in taxable gross receipts. 9/24/65.

[550.0770](#) **Tips—Amount Specified by Customer.** Banquet tips were not considered part of the taxable selling price of meals when the caterer added to the price of the meals an amount specified by the customer and distributed this amount to its employees. The amount was not a charge made by the caterer but was voluntarily offered by the customer. 5/19/77.

[550.0800](#) **Tips Which Are Not Applied to Wages.** Where a restaurant operator merely collects the tips on behalf of employees and does not apply them against the employees' minimum wages, under circumstances where the customer is not obligated to pay the tip, the amount of such tips is not part of the retailer's gross receipts from the sale of meals. 8/28/53.

(e) CATERERS

550.0809 **Cake Cutting Services.** Cutting and serving a customer-furnished wedding cake by a country club constitutes a sale, and such charges are considered taxable gross receipts. Sections 6006(d) and 6012 of the Revenue and Taxation Code. 9/14/93.

550.0809.300 **Catering Functions for Groups from the Federal Government.** A major hotel performs catering services for groups from the federal government (i.e., Air Force, Department of Defense, Red Cross). In order for the hotel's sales to such groups to be exempt, the hotel must substantiate that the purchases are official purchases of the United States (or U.S. instrumentality) and that the groups are authorized by the United States to purchase the catering from the hotel on behalf of the United States in accordance with Regulation 1614. If the caterer is unable to acquire sufficient proof that the purchases are official purchases of United States, the sales to such groups are regarded as sales to individual employees of such organizations and are properly subject to sales tax. 7/3/96.

550.0812 Charges Made by Caterers for Use of Premises. When billing their customers, many food service providers include charges for the use of premises. In general, hotel and restaurant charges for premises are subject to tax when the charges relate to an event where the hotel or restaurant serves meals, food or drinks; whereas hotel or restaurant charges for premises used for a meeting or some other event where no meals, food or drinks are served are not subject to tax. This standard also applies to “similar establishments” such as convention centers and country clubs. (Regulation 1603(a).)

Regulation 1603(h)(1) specifies that a “caterer” cannot be the same person who supplies the premises, e.g., a hotel, restaurant, or banquet hall, but must be a person who serves meals, food or drinks on the premises of a third party. In other words, the caterer must serve meals, food or drinks on the premises of the customer or on premises that the customer has obtained from someone other than the caterer.

Regulation 1603(h)(4) is written in terms of premises provided by the same person who provides the meals, food or drinks, i.e., someone who is not a “caterer” as defined in subdivision (h)(1). This subdivision applies only to unusual circumstances such as when the premises are used most of the time for purposes unrelated to the serving of food, meals or drinks.

Facilities that are not primarily used for serving meals, food or drinks, like aquariums, museums and zoos may also operate a cafeteria, snack bar or other eating concession. These facilities may rent some or all of their premises for catered events. Other types of establishments may designate specific areas of the property for events where meals, food or drinks are served, such as a winery with a courtyard for wedding receptions or a horse ranch with a picnic/barbecue area.

Under Regulation 1603(h)(4), if premises and catering are provided by the same person and if the primary purpose of a facility, or a specified portion thereof, is to serve meals, food or drinks, then the charge for that type of area is subject to tax. In other words, if a facility such as an aquarium operates a café and a group rents the café for a cocktail party, the charge for the premises is subject to tax. If a facility is not primarily used for serving meals, food or drinks and the group rents the entire facility, i.e., the whole aquarium, for the cocktail party, then the charge for the premises is not subject to tax. 8/6/03. (2004–2).

550.0818 Cold Food on a Large Returnable Tray. A caterer merely provides cold food on a large returnable tray in a bulk amount. Even though the food has been previously prepared to be eaten in individual servings, as in a tray of sandwiches, and although the tray is a “facility of the retailer” under Regulation 1603(f), the food is not considered to be furnished in a form suitable for consumption from that facility. Where the tray is brought in and deposited at the customer’s premises with no further participation on the part of the caterer’s employees, there is no “serving” within the meaning of Regulation 1603(h). Such sales are sales of cold food products exempt from tax. 9/2/94.

550.0820 Contract—Form of. Although a transaction between a caterer and an employer is designated in a contract between the parties as a sale of meals by the caterer for resale by the employer to his employees, the Board may look through the form of the transaction to determine whether, in fact, the sale by the caterer is a sale for resale. If the substance of the transactions is found by the Board to be a retail sale by the caterer, the gross receipts therefrom are subject to sales tax. 8/30/66.

550.0824 80/80 Rule. A caterer has gross receipts which are over 80% from the sale of food products and more than 80% of those sales are subject to tax. The caterer has no on-site eating facilities such as tables and chairs.

Regulation 1603 limits the 80/80 rule to “restaurants, fast-food establishments, concessionaires, soda fountains, and other similar establishments.” A caterer with no on-site eating facilities is not subject to the 80/80 rule. Thus, sales of cold food “to go” by the caterer are not subject to tax. (Under certain circumstances, a person who does not own on-site eating facilities is nevertheless regarded as having on-site eating facilities, e.g., when the person operates in a shopping mall that offers shared eating facilities for a number of food vendors.) 9/15/87.

550.0826 Employer Subsidies to Caterer. When a caterer operates a cafeteria for an employer under a contract providing that the employees will pay a designated amount for their meals and the employer will pay a subsidy, the court has ruled that the subsidy is not part of gross receipts (*Szabo v. SBE*). However, when the employees pay nothing for the meals and the employer pays the entire amount required by the catering contract, the payment cannot be considered a subsidy as there is nothing to which it could be attached as a subsidiary payment. The entire amount is gross receipts from the sale of meals. 10/4/83.

550.0827 Event Planning Service. The taxpayer is an “event planning” business. It is hired by customers to coordinate large functions. When an event is booked, the taxpayer obtains various caterers and restaurants that cater the food. The caterer or restaurant sends the taxpayer an invoice and the taxpayer in turn sends an invoice to the customer. The taxpayer bills the customer the same amount the caterer or the restaurant invoices it. The taxpayer’s compensation is obtained from the caterer or restaurant who pays the taxpayer a certain percentage of the total cost of food and beverage. The customer makes the check payable to the taxpayer.

Under these facts, the taxpayer is the person contracting with the customer for a sale. Therefore, the taxpayer is buying and selling for its own account and is not acting as an agent for the caterer or restaurant. Accordingly, the retail sale in this situation is the sale by the taxpayer to the customer and the taxpayer owes sales tax measured by the entire charge for catering collected from the customer. The taxpayer should issue “resale certificates” to the caterer or restaurant.

Furthermore, the taxpayer’s event planning is a preliminary step in its contract to furnish the party supplies, meals, food and beverages for the event. In this situation, sales tax applies to the entire charge for furnishing the party supplies, meals, food, and beverages, including the charge for the taxpayer’s labor in planning the event because the charge for the labor would be regarded as a charge for services that are part of the sale of tangible personal property. Such amounts are part of the taxpayer’s taxable gross receipts from the sale of tangible personal property, even though such amounts are received from the caterer or restaurant. 11/28/95.

550.0827.725 Food Catering. A caterer contracts with various employers specifying that the caterer will provide food service and will operate executive dining facilities and cafeterias at the employers’ business locations. The operations provided for a subsidy, if necessary, to guarantee the caterer an adequate return on the operation. Three locations allowed employees and others to eat without direct payment at the time of consumption of the meal. These three locations operated by a procedure whereby the caterer would receive payment directly from the employer (not the employees) at a later date. Such payment included the fees, the subsidy, if applicable for that period, and a per meal charge for the number of meals eaten or a flat fee per employee. The caterer believes that pursuant to *Szabo Food Services, Inc. v. State Board of Equalization* ((1975) 46 Cal.App.3d 268) the fees and subsidies received from these three locations are excluded from the taxable measure.

The caterer’s reliance upon *Szabo* as being identical is misplaced. In contrast, *Szabo*’s cafeteria’s operated on a direct payment system wherein those eating would pay for the meal directly to cafeteria personnel. The court reasoned that “the employees who purchased the cafeteria meals provided the only consideration for the sale of the meals.” At the locations at issue, the caterer does not collect cash payment from the patrons. The patrons eat without paying (signing a guest check in some instances) and the caterer is paid at a later date pursuant to an agreed upon rate or formula. The caterer receives a single payment which includes consideration for the food and services as well as the fee and the subsidy. This is the difference between this case and *Szabo*. In *Szabo*, the consideration received from the employees as payment for the meals is readily calculable and easily verified as representing the only consideration which is included in gross receipts. In this case the employers, not the employees, pay the consideration which includes the payment for the meals, the fees, and the subsidies. At these three locations, all amounts received by the caterer from the employers are and must be deemed to be consideration received for meals provided and thus includable in gross receipts. 7/17/90.

550.0828 Food and Drink Aboard Boat Charters. A taxpayer’s operation consists of boat charters. Less than five percent of the taxpayer’s revenues are derived from boat charters where no food or drinks are

provided. With respect to the remaining revenues, the taxpayer enters into two types of contracts. One type provides for charges quoted on a per-guest basis which includes tax and tip. The other type of contract separately states charges for the “yacht and crew,” food, drinks, music, tax and tips. The “yacht and crew” charge includes a charge for food and beverages servers.

A significant purpose for a person entering such a charter involving the purchase of taxable food is to obtain the benefits of the yacht charter. That the point of departure and point of return are the same does not affect the analysis since tours around the bay are just as much transportation as a ferry across the bay. Charges attributable to the yacht charters are not includable in the taxpayer’s taxable gross receipts. In addition, charges for optional live music are also not part of the taxpayer’s gross receipts.

Whether or not they are separately stated, amounts attributable to the sale of food and beverages and for the service of food and beverages are subject to sales tax. 10/23/90.

550.0835 Full Service Catering. A full service catering company, in addition to food or the service of food, may provide many items, such as tents, dance floors, etc., when events are scheduled. They also provide labor to install these items and also service to install temporary lighting etc. Other items provided include video screens, entertainers, etc.

If a tent, subflooring, Astroturf, canopies, and generators and air compressors are rented to provide a customer with a temporary sheltered place in which to provide a meal, the charge for the facility is included in the taxable gross receipts from the sale of the meals. The facility is not leased to the client, but is used in connection with the sale of the meals. The taxable gross receipts also includes the labor to install the items, the temporary lighting, heating, electrical fixtures as well as the charge for the painter who paints the facility.

Tax does not apply to a charge for entertainers or for the sublease of tax-paid equipment, such as dance floors, stages, screens, garden fountains, video screens, podiums, gazebos, and p.a. systems, when the customer has specifically ordered the entertainers or equipment and they are not customarily provided in connection with the preparation and furnishing of food. 1/17/92. (Am. M98-3).

550.0838 Hourly Employees. Charges for hourly employees hired by a caterer are included in the caterer’s gross receipts. The reference to hourly employees in Regulation 1603 (h) refers to hourly employees hired by the customer. 8/17/90.

550.0840 Independent Contractor. Irrespective of the conclusions stated in a written contract as to the relationship between an employer and a caterer, where the caterer purchases food, prepares and serves it (whether with its own employees or through a manager directing those on the payroll of another), and participates in the retail cash sale, the caterer is engaged in a retailing activity. The caterer is an independent contractor making taxable retail cash sales pursuant to a contract with the employer. 3/16/59.

550.0841 Independent Contractor. A taxpayer enters into agreements to prepare and serve food for various wineries under three scenarios.

Scenario 1. The taxpayer charges for his services by the day. The meals are served either in a banquet room, at an owner’s house, or on a passenger train. The taxpayer decides what he will serve and performs all the cooking and serving in addition to the set up and cleaning for the meal. In addition, the taxpayer educates the winery’s guests by allowing them to observe him prepare the food in the kitchen while explaining its preparation.

Where a person who hires a caterer does not withhold and pay federal and state income tax and social security tax with respect to the amounts paid to the caterer, the caterer is an independent contractor, not an employee. Since the persons hiring the taxpayer do not treat him as an employee by withholding income and social security taxes, the taxpayer is a caterer as defined in Regulation 1603(h). Hence, sales tax applies to all of the charges made by the taxpayer in connection with his service of the meals.

Scenario 2. The differences between this scenario and the first one are that there is a limitation placed on the amount of cost per person and the guests pay for the meal and not the winery. If the caterer is paid by the winery, the caterer would make a sale to the winery for resale to the winery's customers. If so, the winery owes sales tax on its sales to the customers. On the other hand, if the caterer sells the meals and collects payment directly from the customers of the winery, then the caterer makes taxable retail sales to the winery's customers.

Scenario 3. The taxpayer works for five rail cars located in California, Oregon, Missouri, and Washington. The taxpayer either starts in California and stays in California, starts in California and leaves the state, starts out of state and ends in California, or starts out of state and stays out of state. Wineries fly him to his starting destinations. When the taxpayer is traveling on a California/out-of-state train, the meals are served both in California and out of state. The taxpayer cooks breakfast, lunch, and dinner. He makes beds and does some general maintenance and cleaning. The taxpayer chooses what meals will be served with the wines provided by the winery. The taxpayer charges the winery \$1,423.00 (\$523 for food and supplies, and \$900 for his catering labor). His charges for other services, such as cleaning, making beds, and maintenance, are stated separately from the catering charges.

The separately stated charges for cleaning, making beds, and maintenance are not related to the sales of meals and are not taxable. Charges for catering, food, and supplies are retail sales. An allocation should be made for sales without the state which are not subject to tax. 8/31/95.

550.0847 Minimum Donation for Serving of Meals. An organization's operation consists of the following transactions:

The organization prepares and delivers two meals per day to people with AIDS and AIDS-related complex. The service is free. At the time of client intake, a donation of up to \$4.25 per day, which is substantially less than the cost of each meal and delivery, is asked to help offset the cost of food, but no one is turned away if they are unable to pay.

Under a contract with a hospice program, the organization provides meals for the patient at a hospice. It provides the cooks and raw food to the kitchen where all of the food is prepared and served on the premises of the hospice.

The organization has an agreement with a charity where the charity will pay \$2.00 per client per day for AIDS/ARC patients in its project. This agreement simply offsets a small part of the cost for the meals.

The transfer of meals for a suggested minimum donation is regarded as a sale of the meal since such a transaction is considered to be a transfer of tangible personal property for a consideration. The donations received from such sales are included in the retailer's gross receipts and the donations are subject to tax. The gross receipt from the sale of meals also includes the amounts received for the furnishing of raw food used to prepare the meals to be sold. Accordingly, the reimbursed costs for the services of the cooks and the food as described above are included in taxable gross receipts. The \$2.00 per meal received for the transfer of meals to the charity is also a sale and the gross receipts from such sales are subject to tax. 6/9/88.

550.0848 Preparing Food for People in their Homes. A private chef makes a living by preparing food for people in their homes. Usually, the chef's clients have already purchased the food. However, occasionally the chef purchases the food for them and obtains reimbursement for the actual amount. The chef gets paid by the hour for his labor. The customers are billed for the chef's time for travel, shopping, cooking, and on rare occasions, serving the food. All the food is prepared and eaten by the clients in their home. The chef pays his own federal, social security, and state taxes.

A person is not an employee solely because he is hired by the hour or day. In an employment relationship, the employer withholds and pays social security and federal and state income taxes. If the employer withholds, then the Board generally considers the relationship to be an employment relationship if other aspects of the relationship are not inconsistent with such a conclusion. On the other hand, if the individuals treat the arrangement as the hiring of an independent contractor without withholding, the Board generally

accepts their apparent view of the relationship. Here, since the chef pays his own federal, social security, and state taxes, he is considered an independent contractor. Therefore, the chef is a caterer under Regulation 1603(h) and all of his charges are taxable including those for reimbursement of the cost of foods. 6/25/96.

550.0850 Rentals. Tax applies to a caterer's entire charge, including the charge for the use of dishes, silverware, glasses, chairs, tables, champagne fountains, and other property used by the caterer in connection with the serving of meals. The caterer cannot issue a resale certificate for the purchase or leasing of such items because the caterer does not sell nor rent such items to its clients. Rather, the caterer uses such items in connection with its sale of the meals (Sales and Use Tax Regulation 1603(h)).

On the other hand, a caterer may issue a resale certificate to a rental company to lease tangible personal property which the caterer in turn subleases to its clients when the clients have specifically ordered such property and the property is not customarily provided in connection with the preparation and furnishing of food. Such property could be decorative props, such as artificial floral displays, lighting for guest speakers, sound systems, or video systems. 6/14/89.

550.0855 Rental of Facilities. If a caterer contracts with a facility (room, auditorium, yacht, etc.) owner for the use of the facility for the serving of food by the caterer to the caterer's client, the caterer is considered the equivalent of a restaurant serving food, as opposed to a caterer serving food in a client's facility. Therefore, such a caterer should not be considered as renting props, costumes, displays, and flowers, to the client for the event. The caterer may not purchase or lease such items for resale and may not deduct the amount of the charge for such items related to the service of the food from the caterer's taxable gross receipts. On the other hand, charges for items unrelated to the sale of tangible personal property are not part of the caterer's taxable gross receipts. For example, a charge for costumes for persons serving meals would be taxable while a charge for costumes for entertainers providing optional entertainment would not be taxable. When the facility in which the food service occurs is mobile, such as a yacht or bus, a charge for transportation is nontaxable. However, if the yacht remained moored and was not used for transportation, the charge for its use for food services would be taxable. 11/30/89; 10/25/90.

550.0860 Services—Charges for. Charges for bartenders, waitresses and cooks, hired by a caterer to cater a meal, are includable in the measure of the tax, even though these personnel were determined by the Employment Development Department to be independent contractors rather than employees. Their status as independent employees is not sufficient to exempt charges the caterer makes for their services in connection with the serving of meals. Tax applies to the entire charges made by caterers for serving meals: As long as the caterer's customers are billed for the labor, they are a part of the caterer's gross receipts. 10/17/66.

550.0870 Special Event Charges—Caterer. A caterer who designs, plans, and coordinates parties and special events that usually take place on a client's property asked the following questions: (The responses are based on the assumption that none of the nontaxable charges are mandatory services in order to obtain the meals).

(1) Does sales tax apply to marked up items such as decorating food buffet and entertainment sites, wait staff, site managers, and administrative personnel?

In general charges for items relating to the preparation, furnishing, and servicing of food must be included in the measure of sales tax. Charges not related to service of food, e.g., entertainment are nontaxable. The decoration of the food buffet is taxable. The decoration of entertainment sites is excludable from the measure of tax.

(2) Are the following administrative fees charged to clients subject to sales tax?

(a) Phone

(b) Freight

- (c) Travel
- (d) Postage
- (e) Insurance
- (f) Accommodations (for entertainers, staff)
- (g) Temporary office equipment rental

These charges are taxable when related to sales of tangible personal property (meals). For example, charges for accommodations for staff who will serve meals are taxable.

- (3) Are rental of costumes for entertainers taxable?

If this is a charge which is passed on to the client, it is not taxable. However, the costume supplier's charge to the caterer may be taxable as explained in Regulation 1660.

- (4) Are prop rentals for decor taxable? These props are sometimes custom-built by the caterer and rented to client. They are returned and used again. Other times, props are rented from outside sources.

When props are related to service of food, i.e., table decor, the caterer is regarded as the consumer and may not purchase or rent the property ex-tax for resale. The caterer is the consumer and the charge to the client is part of taxable gross receipts.

Since these transactions occur on the premises of the client, the transfer of possession and control of items unrelated to food service are regarded as rentals. With respect to props which the caterer designs and builds, they are not rented in substantially the same form as acquired and the rental charges are taxable.

When rental props are from an outside source, the caterer is subleasing to its client and rental is not subject to tax if tax has been paid to the prime lessor. However, the caterer may choose to issue a resale certificate to its lessor and pay tax on its rental charge to the client as explained in Regulation 1660.

- (5) Is a charge for a one time liability insurance for a specific event which is marked up when billed to client taxable?

Since it is related to taxable sales (meals, etc.), the charge is taxable as a part of caterer's overhead cost of selling those items.

- (6) Is a professional fee for designing and coordinating an event, for which the client is billed separately for materials, subject to tax?

If the fee is in connection with the sale of tangible personal property, it is taxable.

- (7) Is providing consulting service to a client regarding a party or event subject to tax?

If the consulting is unrelated to any sale of tangible personal property, the charge is nontaxable.

- (8) Is providing an entertainment production package which includes: entertainment, costumes, staging, sound system, lighting, seating, etc., subject to tax?

Charges for optional entertainment are not taxable. Assuming that the lighting and seating are not the same as used in connection with serving of meals, these charges also are nontaxable.

- (9) Is valet parking taxable?

Valet parking is not taxable. 11/6/90; 12/12/90. (Am. 2000-1).

550.0880 Stand-by Charges. A caterer who serves meals from a portable kitchen to motion picture studio personnel filming on location is requested from time to time, to have his driver stand-by in case a second meal is needed. Separately stated charges for driver stand-by time occurring after the sale of the first meal are not subject to tax where charged only if the second meal is not purchased and the total charge is paid to the driver as wages for the time spent waiting, rather than any physical activity in preparing or serving the meals. 9/1/66.

550.0900 Supervisor. A person, who receives a fixed weekly wage for supervising the preparing and serving of meals in a dining room reserved for the use of designated personnel, owns no facilities, purchases and pays for no food, handles no money, and is accountable for none, has no say in the hiring, payment, or firing of persons ostensibly in his employ, and receives no subsidy, does not sell the food on his own behalf and is not subject to tax. 8/6/69.

550.0908 Taxable Food Percentage. A taxpayer operates a catering, restaurant, and gourmet shop at a single location. In determining whether 80% or more of the sales are taxable, all sales at the business location should be considered rather than considering sales on a department by department basis. Nevertheless, sales of food in quantities that are not suitable for consumption on the seller's premises would not be subject to tax. (e.g., bottled barbecue sauce, whole pies, quart of ice cream) 11/6/85.

550.0920 Wages Paid by Caterer to Temporary Help. Wages paid by a caterer for outside help to serve meals, tend bar and wash dishes are not deductible from taxable gross receipts for selling meals, even though the amount thereof is separately stated to the customer. 2/15/67.

550.0921 Wedding Functions. A wedding consultant/planner makes all of the arrangements necessary for a wedding. The consultant's charges and the corresponding tax application are set forth below:

(a) Wedding cakes. Charges by a caterer for the issuing of food provided by others are subject to tax under Regulation 1603(h). Therefore, charges for providing the wedding cake and the charges for the cutting and serving of cake are subject to tax.

(b) Accommodations. When the accommodation charges relate to sales of tangible personal property, they are subject to tax. Thus, charges for accommodation of staff who will serve meals must be included in the measure of tax for sales of those meals.

(c) Musicians/entertainers. Assuming these performers are not used in connection with the sale of any tangible personal property nor are they used in connection with the service of food, amounts paid for these performers are not subject to tax.

(d) Set-up/tear-down labor. If these amounts are connected to the sale of the tangible personal property or the service of the meals, charges for set-up and tear-down are included in the measure of tax. 3/22/94.

(f) SOCIAL CLUBS, FRATERNAL AND RELIGIOUS ORGANIZATIONS

550.0925 Admission Charge. The exemption for meals sold by religious organizations (Regulation 1603 (l)) is not negated because the meals are sold for consumption from within a place the entrance to which is subject to an admission charge. (Regulation 1603(d).) 5/8/92.

550.0940 Dues. Amounts paid to meet a minimum food and drink requirement imposed on country club members are additional costs of membership rather than taxable additional amounts paid for food and drink because the purpose of the requirement is to keep the bar and restaurant at a break-even level in lieu of making up a deficit from other dues or club accounts, and thus the members have a social reason for paying the minimum even if the tangible personal property is not consumed. 7/22/69.

[550.0960](#) **Frequency.** When the organization meets once a week on a regularly scheduled basis, it will be considered to be meeting once a week despite the fact that a meeting is occasionally not held because of a holiday or other reason. There is no requirement that there be at least 52 occasions on which meals, food and drink are furnished. 1/5/70.

[550.0980](#) **Frequency.** A club or fraternal organization which furnishes meals less frequently than once a week is a consumer and therefore may not give resale certificates to the caterer. 11/5/52.

[550.1000](#) **Guests.** When meals, food and drink are furnished by a club or organization to a guest of a member, and the member rather than the guest is required to pay all charges incurred by the guest, and the guest cannot gain access except by invitation, the meals, food and drink are to be considered furnished to the member. 1/5/70.

550.1016 Meal Sales at Church Retreat. A religious organization operates a retreat for its members and in conjunction with the retreat provides meals and lodging. The meals are served in a dining hall operated by the organization which is open only to church members attending the retreat. The funds derived from the sale of the meals are used to offset the cost of operating the dining hall. If excess funds exist, they are used for other expenses related to the maintenance of the retreat.

The exemption provided under section 6363.5 is limited to meals served at “fund raising” functions. The church operates the dining hall to furnish meals to its members assembled there as retreatants attending services and receiving religious training and not as a “fund raising” function. Therefore, the gross receipts from the sales of these meals are not exempt from sales tax. 11/17/83.

[550.1020](#) **Minimum Purchase Requirement for Members.** Country clubs and other organizations sometimes establish minimum food and drink purchase requirements for their members. If a member’s purchases are less than the minimum, he is required to remit the deficiency. Such payments are additional membership fees and are not payments for tangible personal property. Accordingly, they are not includable in taxable gross receipts from sales of food and drink by the club. 7/22/69.

[550.1036](#) **Religious Organization.** One of the conditions that must be met in order for sales of meals to be exempt from tax pursuant to Regulation 1603(l) is that the purpose in furnishing or serving the meals as food products is to obtain revenue for the functions and activities of the organization. For meals sold at religious camps, the failure to meet the above requirement is why the meals are not exempt under Regulation 1603(l).

The Board’s experience with such camps is that the meals would be served even if the revenue from the meals did not fully cover their cost. The camp participants must be fed, and it is usually impossible, or at least impractical, for them to obtain meals elsewhere while attending camp. In no sense are the meals served for the specific purpose of raising revenue, as is required by the express language of the regulation. The meals served in camps are a continuing necessity of camp life and the revenue usually covers the cost of meals, but such meals would, in all likelihood, be served even if a loss were incurred.

Furthermore, the language “social or other gathering” in Regulation 1603(l) applies to activities such as church luncheons or dinners conducted for the express purpose of fund raising. It does not include activities within which the meals are an incidental part of continuing operations which have as their purpose religious education and which would be held even if no financial profit were expected. 9/21/71.

[550.1040](#) **Religious Organizations.** Meals served by a church-operated café which is open to the public on a regular, continuing basis are not exempt from tax under section 6363.5. 2/28/63.

[550.1041](#) **Religious Organization.** A church plans to open and operate a cafeteria which will serve vegetarian lunches. The cafeteria will be located on the church’s premises. The purpose of providing cafeteria service is to promote the congregation’s spiritual needs, to work in unity with fellow members, and to provide a place for social gatherings, meetings for members, and fund raising. The cafeteria will be staffed by volunteers and all receipts from the sales of lunches will be used for the operation and

maintenance of the church facilities. It is intended that the cafeteria's use will be restricted to members of the congregation. However, it could be used for senior citizen events or other community social services.

If the church qualifies as an organization, the property of which is exempt pursuant to subdivision (f) of section 3 of article XIII of California's State Constitution, the sales of vegetarian lunches for consumption on its premises will not be taxable during any period which it serves meals in conjunction with gatherings and events conducted by the church on behalf of the congregation.

However, if the church intends to open the cafeteria to the public on a regular basis (senior citizen events or other community social services), sales by the cafeteria during these periods will not be eligible for the exemption provided by section 6363.5, regardless of the fact that the receipts will be used for the church's operation and maintenance. 11/9/95.

550.1042 Religious Organizations. A religious organization sells coffee, sodas, "Snapple," muffins, bagels, and other snacks in conjunction with its services which are primarily held on Sundays and Tuesdays. Tables and chairs are provided in the foyer of the facility to provide ministry attendees an opportunity to sit and eat. This seating arrangement is designed to allow ministry attendees to build friendship and experience fellowship within the church. The proceeds from these sales are used to cover the cost of the food and beverages with any excess placed in the ministry's general fund.

The property of the organization is exempt pursuant to Subdivision (f) of section 3 of Article XIII of California's State Constitution. Thus, its sales of meals and food products at these social gatherings are exempt from sales tax under section 6363.5 provided the purpose of the sales is to raise revenues which are used for carrying on the functions of the organization.

However, carbonated beverages and carbonated or effervescent bottled waters do not qualify as food products. Thus, sales of these items are subject to sales tax. Sales of "Snapple" products which are flavored ice teas or noncarbonated flavored waters are not taxable. 8/21/95.

550.1043 Religious Organizations. Religious organizations are the retailers of meals and, if all the conditions set forth under Regulation 1603 subdivision (l) are met, sales tax does not apply to a religious organization's sales of meals at fund raising banquets. The person furnishing the meals is selling the meals for resale to the religious organizations and the religious organizations should issue resale certificates to the person furnishing the meals even though the religious organizations may not be required to hold seller's permits. It is not necessary for a religious organization's personnel to physically serve the food for the sales tax exemption to apply. However, if a religious organization does not charge its invitees, or charges them only at cost, the purpose of serving the meals is not to raise revenue and the sales tax exemption in Regulation 1603 subdivision (l) does not apply. 3/22/85.

550.1060 Religious Organizations. Meals sold by a caterer to a religious organization and served by the religious organization for fund-raising purposes are exempt from sales tax. 4/23/70.

550.1085 Sales by Religious Organizations of Alcoholic or Carbonated Beverages for a Separate Price. The exemption provided by Regulation 1603(1) only applies to sales of meals and food products. Sales of alcoholic or carbonated beverages sold for a separate price are subject to sales tax. If such beverages are included in the price of the meal (single price) and the sale meets the requirement of the exemption, the beverage is regarded as part of the exempt sale of the meal. Whether or not an admission charge is made does not affect the exemption. 2/7/90. (Am. 2004-2).

550.1100 Surcharges. Surcharges collected on behalf of an organization who, by prearrangement, has a retailer collect a fixed sum per cocktail, etc., sold to members and guests of the organization are not gross receipts from the sale of the cocktails, providing:

- (1) The patrons are formally notified that such a sum is to be collected;
- (2) The amount is specifically stated in the formal notice;

- (3) The total amount collected is paid over to the organization, and;
- (4) The function during which the sums are collected is not open to the general public. 8/6/65.

[550.1120](#) **Youth Centers**, tax applies to sales by to the same extent as to sales by restaurants, soda fountains and similar establishments. 1/17/50.

(g) EMPLOYEES', TEACHERS' AND STUDENTS' MEALS

[550.1135](#) **California Conservation Corps**. CCC pays each corpsmember \$580 a month and deducts \$145 for room and board. This constitutes a specific charge as described in Regulation 1603(k)(2)(B). Although corpsmembers are required to attend specified evening workshops and classes, most of the classes are taught by other than CCC staff and at facilities other than those of CCC. The CCC is not a school but an employer providing opportunities for employees to further their education. Since a specific charge is made for meals, the portion of the \$145 allocable to meals is a taxable sale. 7/15/86.

550.1160 Caterer, Resale of Meals Purchased from. Employer engaging outside caterer to prepare and furnish employee meals for which employer charges employees is purchasing meals for resale, can give resale certificate to caterer. 5/5/50.

550.1180 Caterer Serving Meals at School. Meals and other food products sold to students at a school cafeteria by a caterer, pursuant to an agreement between the caterer and a student organization, are taxable because the meals and other food products are being sold by the caterer to the students directly and not to the student organization for resale to the students. Exemption under section 6363 of the Sales and Use Tax Law is applicable only in cases where meals and food products are sold to students of a school by public or private schools, school districts, student organizations, parent-teacher associations, and certain blind persons. 10/7/69. (Am. 2007-1).

(Note: Subdivision (j)(2) of Regulation 1603 was amended to add new subdivision (D), effective June 13, 2002, which provides that sales made by caterers of meals or food products for human consumption to students of a school are not subject to tax under certain conditions.)

550.1190 Caterer Serving Meals—Various Situations.

- 1) When the federal government funds a public school lunch program, the caterer hired by the school to serve the lunches may be selling meals to the public school for resale to the federal government. However, if the caterer is paid for the meal by the consumer himself, the transaction is subject to sales tax.
- 2) The use of United States Government general assistance funds to purchase a meal does not qualify the transaction as a sale to the United States. 11/12/76.

550.1200 Clubs. Teacher organizations such as faculty clubs having a separate existence from a school or university as a legal "person" (e.g., corporation, unincorporated association) are not included within the meaning of "school" for purposes of the exemption which section 6363 grants to meals sold by "schools." 12/11/64.

[550.1228](#) **Definition of Student.** For purposes of section 6363, a student is any person attending classes who is required to register with the school, even if the class is a one-time seminar for which a fee is charged. 10/17/88.

550.1234 Employee Meals. Employees of a restaurant are required to remain on the business premises for an 8-hour shift period but are authorized to have one-half hour for lunch during each shift. The employees are paid a flat sum of money for each 8-hour shift. Overtime pay is computed based on an allocable portion of an 8-hour work day. Based on the above, it is concluded that employees are being paid for an 8-hour shift and that this payment basis should be used in determining the hourly wage and the value attributable

to employee's meals for purposes of determining meals credited toward the minimum wage for purposes of Regulation 1603(k). 8/8/77.

550.1240 Farm Labor Contractor. Under sections 13(a)(2) and 13(a)(20), of the Fair Labor Standards Act (29 U.S.C.A. sections 213(a)(2), 213(a)(20)), employees of "retail establishments" are exempt from coverage of the act. Pursuant to the decision of the U.S. District Court in *Mitchell v. Anderson*, 235 F.2d 638, the Wage-Hour Administrator in an opinion dated November 7, 1961, has concluded that kitchen employees of a farm labor contractor serving meals to Mexican nationals employed by farmers, are not employees of a "retail establishment." Although, for the purposes of the Fair Labor Standards Act, the contractor is not a "retail establishment," nevertheless, the contractor is a "retailer," as defined in section 6015 of the Revenue and Taxation Code, whose gross receipts from sales of meals are subject to sales tax. 12/11/64.

550.1260 Farm Laborers. Under section 6363 as amended, effective 9/20/63, sales tax applies to sales of meals by employers of Mexican nationals, but does not apply to sales of food to be prepared by the employees themselves. 10/23/63.

550.1270 Fast Food Chains—Students' Meals. Where the students purchase meals from schools or PTAs and these meals are sold to the schools or PTAs by outside entities such as fast food chains, the sale to the school district or PTA would constitute a sale for resale while the subsequent sale to the students would be considered nontaxable pursuant to section 6363. The school district or PTA must independently contract with outside entity for the purchase of food products. If the outside entity sold the products directly to the students, such sales are not sales by the school and do not fall within the above exemption.

Where the school districts or PTA will be using the fast food products as components of preparing "free" lunches, the school or PTA is the consumer of the property used to prepare the free lunches. However, section 6363 specifically provides that the exemption for school meals applies to sales, use, or other consumption of food products furnished or served to students. Thus, as long as the food products purchased by the schools or PTAs are component of lunches furnished or served to the students, the exemption will apply to purchases of these food products. Under these circumstances, the school or PTA should issue an exemption certificate as provided in Regulation 1667 to the vendor. 8/17/95.

550.1275 Firefighters. The California Department of Forestry and Fire Protection (CDF) requires its firefighters to reside and eat in their fire stations when they are on duty. CDF buys the food products, and cooking duties are performed by the captain or whomever is assigned the function by the employer. Based on the prior years total food cost and number of meals served, CDF determines the average cost per meal, to which sales tax reimbursement is added, and deducts that amount from the firefighter's paychecks. On occasion, other persons eat at the fire stations, but they are apparently not charged for the meal.

CDF is a retailer selling food products in a form for consumption at tables, chairs, counters or from trays, glasses, dishes, or other tableware which it provides. As a result, under Regulation 1603(f), its sales of food products to employees are subject to tax with deduction from their paychecks being a proper method of collecting sales tax reimbursement. CDF must also pay tax on its sales of meals to nonfirefighters at the stations and may collect sales tax reimbursement from those persons by agreement with them. 1/23/80; 2/14/96.

550.1280 Guests. Where meals are furnished to guests of students but are charged to and paid for by the students, the exemption applicable to students' meals is properly applied and no tax is due, even though the meals are actually consumed by the guests. Such meals are not sold to the guest, but to the students. 9/28/51.

550.1300 Minimum Wage Law. When employees who are subject to minimum wage orders receive meals in lieu of cash payments, the difference between amounts actually paid to employees subject to minimum wage orders and the amount of the minimum wage is regarded as consideration attributable to the furnishing of meals, and this difference represents taxable gross receipts from the sale of meals. Sales of such meals are, under section 6363, effective September 20, 1963, taxable. In such circumstances the

amount of tax due may be measured by taking the appropriate percentage of the difference. No amount need be charged to the employee as tax reimbursement because the amount is considered to be included in the value of the services rendered. 3/4/64.

550.1305 Minimum Wage Law. Under regulations promulgated by the Division of Industrial Welfare, Department of Industrial Relations, only cash or its equivalent, and gratuities (tips) and meals up to certain specified amounts, may be used to meet minimum wage requirements for women and minors in the public housekeeping industry. Fringe benefits paid for by the employer, including health and accident insurance premiums, may not be credited toward the minimum wage. Consequently, when cash wages plus tips do not equal the minimum wage, and the employee eats meals furnished by his employer, the value of the meals up to the maximum allowable amount is includable in the employer's gross receipts from the sale of meals even if he also pays health and accident insurance premiums for the employees. 6/4/71.

550.1310 Minimum Wage Law. Where a restaurant pays waitresses wages less than the minimum wage and no record is kept of tips received, the value of meals furnished to the employees is includable in the measure of the tax.

Since there is no other source from which to meet the minimum wage, it is implicit that the meals are used to meet the difference between the actual wage and the minimum wage. This difference is considered a specific charge. 8/25/70.

550.1320 Number of Employees. The requirement of five or more employees (Regulation 1603(k)(1)) applies to employees of the school district, not of the individual school. 11/15/63.

550.1326 Organizations Included in "Public School." The term "public school" as used in section 6363 includes auxiliary organizations organized and operated under the Education Code and applicable regulations to provide food service to students of the state university and college systems.

The exemption for sales of meals or food products to students by a school (or qualified auxiliary organization) does not extend to carbonated beverages unless the beverage is sold as part of an exempt meal sold for a single price which is listed on a menu or wall sign. 10/17/88.

550.1330 Outside Entity Selling Meals to Students. A food service operator has a contract with an educational institution to operate the institute's food service facilities. The institute pays the operator a management fee. The contract also calls for the operator to turn over to the institute any amount by which the operator's gross receipts exceed its cost of business. If the gross receipts do not total its cost, the institute reimburses the operator for the shortfall in addition to the management fee.

Under the terms of the contract, the food service operator and not the institute is selling the food to the students. Accordingly, the sales are not exempt as sales to students by the institution (Sales and Use Tax Regulation 1603 (j)). 1/25/93. (Am. 2004-2).

(Note: Subdivision (j)(2) of Regulation 1603 was amended to add new subdivision (D), effective June 13, 2002, which provides that sales made by caterers of meals or food products for human consumption to students of a school are not subject to tax under certain conditions.)

550.1340 Private Schools. "Private Schools" as used in section 6363 include only those schools which substitute for public schools in providing equivalent education. The term does not include a specialized training center. 12/5/63.

550.1355 Sales of Beer and Wine at Colleges and Universities. There are no special Alcoholic Beverage Control (ABC) regulations which apply to the sale of alcoholic beverages by colleges or universities or by the student organizations at the schools. These organizations are required to be licensed in the same manner as any other dining facility serving alcoholic beverages. The ABC regulations make no distinction between sales to students or nonstudents.

The sale of nonfood beverages such as carbonated beverages, beer, wine, and distilled spirits are exempt when included in a meal which is sold to a student for a single price pursuant to Regulation 1603(j)(2). Nonfood beverages are not exempt when sold alone or sold with food items but individually priced. Also, nonfood beverages sold to teachers, staff, or guests are not exempt no matter how they are sold. 8/6/90; 7/10/96.

550.1360 Sales of Meals to Corporate Training Centers. A corporation operates a training center for its employees. It contracts with a food supplier to furnish meals to trainees. The corporation makes all payments to the food supplier. No charge is made to the trainees for the meals.

The training center does not qualify as a school in as much as the corporation is not an academic institution that is conducting educational instruction. The furnishing of meals is not exempt as sales of meals to students. Tax applies to the sale of meals by the food supplier to the corporation. 4/28/87.

550.1365 Sale of Meals to Executives. An employer required its executives to eat in the company dining room when hosting business guests and to pay the bill on their personal credit card. To obtain reimbursement for the meals, the executives would include the charges for meals on their weekly expense report.

These transactions were sales from the employer to the executives. When the executives paid by credit card, they incurred a legal responsibility to repay the credit card company regardless of whether or not they were reimbursed by the employer. Although the employer could have structured and accounted for these transactions to be non-taxable, the employer chose to sell the meals to the executives in the same manner as it would sell to anyone else, and then reimburse the executive. Having made this business decision, the employer is bound by the form it has chosen. Therefore, the sales of meals to the executives remain subject to tax and do not represent nontaxable intra-company sales. 4/3/92.

550.1370 Sales of Meals and Food Products at Schools and Colleges. An independent food service contractor operates food service facilities at schools and colleges. Following is a description of the sales transactions which occur at these school facilities:

- (1) Cash sales. Food and beverage sales are made directly to students and faculty members. The company retains all receipts.
- (2) Charge sales. Students purchase meal tickets from the school or college as part of their room and board plan. Meal tickets are redeemed by the company at the school cafeteria and the school is billed directly by the company for each ticket redeemed at a predetermined price per meal.
- (3) Special event sales. The company provides catering services at school functions and events and bills the school directly. These services are also made available to student organizations.
- (4) Vending machine sales. The company sells food, beverages, snacks, and cigarettes through vending machines located on school premises.

Tax applies to the gross receipts from the company's retail sale of meals, food, beverages, and other tangible personal property described under transactions (1) through (4), unless such gross receipts are otherwise exempt from taxation.

Students receiving board from a school or college are considered to be purchasing meals in the school cafeteria or dining facility from the school rather than from the company provided

- (a) the students contract only with the school or college for the board,
- (b) all payments for meals and food products are made directly to the school or colleges, and
- (c) the school or college is solely responsible for providing board to the students.

To the extent that the sales of meals and food products under transaction (2) represent board meals, the company's gross receipts received from the school may be regarded as receipts from sales for resale and the receipts received by the school for the students' board meals are exempt from tax.

Effective August 1, 1983, assuming that the company is the operator of the vending machines located on the school premises, tax applies to the gross receipts from the company's sale of hot and cold food product and other tangible personal property through vending machines regardless of the price charged for such items. 1/23/84. (Am. 2004-2).

(Note: Subsequent statutory change re vending machine sales.)

(Note: Subdivision (j)(2) of Regulation 1603 was amended to add new subdivision (D), effective June 13, 2002, which provides that sales made by caterers of meals or food products for human consumption to students of a school are not subject to tax under certain conditions.)

550.1372 Sales of Meals and Food Products Through Vending Machines to Students. Tax does not apply to retail sales of food products or meals, whether served hot or cold, through a vending machine or otherwise by a public or private school to its students. However, this exemption does not apply to such sales of food products and meals to nonstudents.

In those situations where sales of food products and meals are made through the school owned vending machines to both students and nonstudents, a reasonable allocation between exempt and nonexempt sales can be made. In such cases, the school can establish a representative test of the vending machine sales occurring on the affected campuses. However, before implementation of such a test, it is recommended that the school submit the proposed testing procedure to the Board's appropriate Headquarters section for review so that it can determine its adequacy and advise the Board's district office serving the affected school's campuses. 10/19/83.

550.1373 Sales of Meals by Independent Contractor. A company has entered into a contract with the college granting the company an exclusive right to operate food service facilities on the campus. According to the contract, its sole purpose is providing food and beverage services for students, faculty, staff, and guests of the college. Meals sold by the company to students are cash sales paid at the time of purchase.

It is clear from the express language of the contract that the company functions as an independent contractor. The statute clearly states that the exemption is available to public or private schools, school districts, student organizations, parent-teacher associations, and any blind person operating a restaurant or vending stand in an educational institution. The company falls into none of these categories. Rather, the company is a for profit corporation operating food service establishments as an independent contractor. The company is not entitled to the section 6363 exemption and is thus liable for sales tax on the gross receipts of its sales of meals at the food services facilities located on the college campus. 8/28/89.

550.1375 Sales by Nonprofit Foundations at Colleges and Universities. These foundations are nonprofit organizations known as "auxiliary organizations" of the California State University and Colleges which are organized and operated pursuant to Educational Code sections 89900 et. seq. and regulations promulgated by the Board of Trustees of the State University and Colleges codified under Title 5 of the California Administrative Code sections 42400 et. seq. The auxiliary organizations are formed to provide certain essential functions integral to the education mission of the parent state university or college campus. The range of appropriate activities engaged by auxiliary organizations include the operation of commercial services such as food service.

The furnishing of meals to students by auxiliary organizations is attributable to the auxiliary's parent education institution. Accordingly, the term "public school" as used under section 6363 includes auxiliary organizations which are organized and operated under the Education Code and applicable regulations to provide food service to students of the state university and college system. 5/31/84.

550.1380 Specific Charge. Sales of meals to school employees are subject to tax. However, the sales are taxable only if a specific charge for the meal is made to the employee by payroll deduction or otherwise. Book entries made merely for the purpose of placing a monetary value on the meals furnished employees as a part of compensation are not considered specific charges. In collecting the tax reimbursement, the seller may include the tax in the sale price of the meal, and the school may compute its tax liability to the state upon the sale price less the tax included. 11/2/64.

550.1400 Specific Charge. Under a union agreement, employees of a restaurant are entitled to two meals a day or \$1 in lieu thereof. It is the employer's practice to pay each employee the \$1 meal allowance as an addition to earnings and to deduct this amount when meals are consumed, without regard to the actual retail value of such meals. The \$1 meal allowance is a specific charge for meals and is subject to tax. 7/30/65.

550.1420 Specific Charge. Employer is not taxable on meals furnished to employees unless he makes specific charges for such meals, and reporting fair market value of meals pursuant to government regulations, or union contracts, does not constitute such a charge. Specific charges do include cash or the withholding from wages of an amount sufficient to cover the charges. If an employee receiving meals receives less wages than other similar employees, the difference is regarded as a specific charge for meals. 9/30/63, 10/15/63, 11/7/63, 12/4/63.

550.1434 Student Meals. A nonprofit organization, organized pursuant to the General Nonprofit Corporation Law of California, operates a camp program for several cooperating denominations. Among the primary purposes of this organization are to manage, administer, and operate religious and charitable camps, conferences, and retreats, and to provide consulting services, programming, and leadership training for religious education at such camps, conferences, and retreats.

Section 6363 exemption would apply to the organization's sales of meals to the extent that the camp could be regarded as a school or educational institution and the sales were to students at the school. To qualify as a school or educational institution, the camp must conduct regularly scheduled classes with required attendance in charge of qualified instructors. To qualify as students, the camp participants must be formally enrolled in the classes. If the organization's sales of meals come within the above guidelines, the gross receipts received from the sales of meals are not taxable. 9/21/71.

550.1435 Student Meals. A university conducts a talented youth program (CTX) during the summer. The program offers extensive courses to the students. The students can often get high school, and even college, credit for CTX courses. Students are served meals during their stay.

Persons enrolled in the CTX program are "students" within the meaning of Regulation 1602 (j)(2). Accordingly, sales of meals to CTX students are exempt from tax. 2/17/93.

550.1436 Student Meals. Meals served to attendees at a ranch operated by a county which provides regularly scheduled classes taught by persons with proper credentials are "student meals." Sales by a county agency to the attendees qualifies for the exemption for sales of student meals by a public school.

The furnishing of meals together with lodging to outside organizations which rent the facilities do not qualify for the exemption provided in section 6363.7/10/92.

550.1440 Students—Who Are. Persons attending specialized short courses at a college qualify as "students" if they are formally enrolled therein. Accordingly, the college's receipts from sales of meals to such persons are exempt from sales tax under section 6363. Persons attending lecture series which are open to the general public without any requirement of enrollment do not qualify as "students" under section 6363. 2/26/68.

550.1465 Subsidies to Meal Vendors. A taxpayer is engaged in preparing and serving meals in cafeterias and executive dining rooms pursuant to written agreements with clients. The clients own, furnish, and maintain the cafeteria and dining room premises and equipment. The agreements provide for a management

or service fee and for a subsidy to guarantee an adequate return to the taxpayer. All meals are billed periodically to the clients. No charges are made to the individual diners either by the taxpayer or the clients.

The taxpayer is regarded as making taxable sales of meals to its clients and the amount subject to tax includes the subsidies. In contrast to *Szabo Food Service, Inc. v. State Board of Equalization* (1975) 46 Cal.App.3d 268, the diners here did not individually purchase meals. 6/23/94.

(h) PREPARED FOOD IN CONTAINERS

550.1480 **Banquets.** The sale of cold food prepared for banquets, parties, weddings, etc., picked up by purchasers and subsequently served elsewhere by the purchasers, is not subject to tax. 5/6/54.

[550.1500](#) **Carts.** Sales of wrapped food items such as doughnuts, sandwiches, pies, milk and coffee are not taxable when they are made from carts located outside the entrance of a plant to employees who take them to their desks or workbenches for consumption. 1/18/65.

[550.1540](#) **Coffee—Paper Cups.** The sale of fresh liquid coffee, not accompanied by a sale of other food products in such a way as to constitute the service of meals, to employers who distribute the coffee free to their employees during established coffee breaks is the sale of an exempt food product. However, the sale of paper cups to the employees is taxable where it is not a direct sale of the cups containing the coffee to the employees or to the employer. 7/13/64.

[550.1560](#) **Contracts to Furnish.** A retailer has an informal arrangement with an industrial employer whereby he is permitted to sell pre-packaged food items for consumption at tables and chairs in its plant in return for which the retailer pays 4 percent of his gross to the employer. Sales of such food products under such an arrangement are taxable beginning September 17, 1965. 1/14/66.

550.1580 **Cooking Containers.** Delivery of food in the containers or pots in which it is cooked is not subject to tax, provided these containers or pots are used only to deliver the food to customers who consume the food away from seller's premises and without the use of any dishes or other tableware provided by the seller. It is immaterial whether or not the containers are returned to the retailer. Separate records should be kept of these types of sales for verification of exemption. 1/28/55.

550.1600 **Foil.** Prepared food wrapped in foil and nonreturnable containers, delivered by a seller to customer's premises without the furnishing of any eating utensils, constitutes a nontaxable sale of food products. 5/17/54.

550.1620 **Use of Facilities Furnished by Customer of Retailer.** The 1965 change in section 6359 does not require that the tax be held to apply to the sale of food in bulk insulated containers, which is consumed by employees of an oil refinery, even though some of the facilities for consumption are furnished by the refinery.

The facilities must be reasonably intended for use in consuming the food purchased as evidenced by proximity of the facilities to the place at which the food is sold, and by the terms of the agreement which in some manner shall obligate the food seller to sell food to someone other than the party actually furnishing the facilities. 11/29/65.

[550.1640](#) **Work Benches—Food Consumed at.** Food and food beverages served to employees at their work benches by a mobile coffee and pastry service, and consumed there, is not taxable provided it is supplied only in nonreturnable containers. 4/5/60.

(i) NON-FOOD COMPONENTS OF EXEMPT MEALS

550.1650 **Carbonated Beverage Sold as Part of Exempt Meal.** When sold together for a single established price, the sale of a carbonated beverage is exempt as part of the sale of a student meal. If the single price for the combination of a carbonated beverage and the meal is listed on a menu or wall sign, a

single price has been established. Where each item is charged separately, even though rung up at the same time, tax applies to the sale of the soft drink. 3/28/91.

550.1655 Carbonated Beverages Included in a Meal Sold “To Go” for a Single Charge. A restaurant sells a “bundled meal,” which includes a cold sandwich and a carbonated beverage, for a single price. If the sale is “to go” and is not otherwise taxable under Revenue and Taxation Code section 6359 (e.g., sold for consumption at facilities provided by the retailer or at facilities provided for that purpose, or taxable under the 80-80 rule), the sale of the cold sandwich to go is exempt from tax, but the sale of the carbonated beverage is taxable. Thus, the portion of the price for the bundled meal sold “to go” allocable to the carbonated beverage is subject to tax. 11/13/2001.

550.1660 Chewing Gum not properly regarded as part of an exempt “meal.” 6/1/51.

550.1680 Soft Drinks may be sold to schools, etc., for resale as part of meals even though sale of meals is exempt. Tax applies to sales of soft drinks at school snack bars, etc., when not sold as part of exempt meals. 4/21/50.

550.1700 Vitamin Pills, if actually part of an exempt meal, then exemption of the meal is inclusive of the amount of the charge for meal applicable to the pills. 12/4/51.

(j) HOT PREPARED FOOD PRODUCTS

550.1710 Cooking Cold Food Products. A charge made for cooking cold food products (turkeys, hams, etc.), furnished by customers and delivered to them in a heated condition, is subject to tax commencing January 1, 1972. 12/30/71.

550.1712 Croissants. A fruit or cream filled croissant is a “bakery good” within the meaning of Revenue and Taxation Code section 6359(e). Therefore, sales of such items in a heated condition not in combination with any other item are not subject to tax under Regulation 1603(e)(1). However, a croissant filled with meat and cheese is not a “bakery good” within the meaning of Revenue and Taxation Code section 6359(e). It is more in the nature of a sandwich than a bakery good. Therefore sales of such items in a heated condition not in combination with any other item are taxable sales of hot prepared food products under Regulation 1603(e)(1). 11/14/95.

550.1715 Fresh Crab and Lobster. Crab and lobster sold in a live condition and killed for the customer by placing in boiling water does not result in a sale of hot prepared food within the meaning of the term under section 6359(e) of the Sales and Use Tax Law or Regulation 1603(d)(1). The primary purpose of offering the product for sale in a live condition is to prove freshness, and the primary purpose of placing it in hot water is to kill it. Fresh killed crab and lobster are not “prepared” within the meaning of the word when it is not cleaned and presented in a ready-to-eat condition. 8/4/75. (Am. 2000–1).

550.1753 Microwave Oven. Sales of food products are considered taxable sales of hot food items when a taxpayer’s premises include microwave ovens if (1) the food is of the type which is normally consumed at above room temperature (such as scrambled eggs, pancakes and french toast) and (2) the microwave ovens are accessible only to the vendor. In those situations the fact that the customers cannot heat the food indicates that the vendor is selling the food to the customers in a heated condition. If the heating units are readily accessible to the public, the sales should be regarded as nontaxable sales because the customers are buying the food cold and heating it themselves unless the food products are sold as meals for consumption at facilities furnished by the retailer, or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others, or sold in a place subject to an admission charge. 1/23/78.

550.1770 Nuts. The sale of hot nuts which are sold from enclosed display cases and that are heated through the use of ordinary light globes constitutes a sale of a hot food product and is therefore subject to tax. 8/28/72.

[550.1775](#) **Pasties.** A pasty is not a “bakery good” within the meaning of Revenue and Taxation Code section 6359(e). It is actually an entire meal, compacted into a form more convenient than the ingredients would be if sold as a conventional meal on a plate or cardboard tray. Therefore, sales of pasties in a heated condition constitute taxable sales of hot prepared food products under Regulation 1603(e)(1). 11/14/95.

550.1950 Sales of Hot Meals by River Rafting Companies. A typical commercial white water rafting in California consists of taking groups of people down various rivers which have navigable rapids. None of the land or campsite along the river is owned by the rafting companies. The river trips are conducted by trained guides, often lasting from one to seven days. For multi-day trips, the passengers provide their own gear and eating utensils, and the companies provide, for a lump-sum charge, the guides, boating equipment, cooking gear, and food consumed by the passengers. During the multi-day expeditions, the guides prepare the meals consumed by the passengers. Typically, the lunches consist of cold sandwiches, whereas the breakfasts and dinners comprise both hot and cold foods. Under the above circumstances, the river rafting companies are retailers who sell hot prepared food to their passengers. 9/23/83.

[550.2020](#) **Tortillas.** Tortillas qualify as bakery products and their sale is exempt from tax whether they are sold hot or cold, to the same extent that other bakery products sold on a “take-out” basis are exempt. 1/19/72.